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IN THE

Supreme Court of the United States

October Term, 1974
No. 74-644

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC., and MEMBER COMPANIES,
Petitioners,

vs.

CHRISTOPHER KNOPF, BRUCE GELLER, ED JURIST, JACK ELINSON, SY GOMBERG, and GEORGE ECKSTEIN, on behalf of themselves and all other members of the class of "Employee Producers",
Respondents.

Brief in Opposition to Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

Respondents Christopher Knopf, Bruce Geller, Ed Jurist, Jack Elinson, Sy Gomberg, and George Eckstein, on behalf of themselves and all other members of the class of "Employee Producers", respectfully file their Brief in Opposition to the Petition for a Writ of Certiorari filed herein by the Association of Motion Picture and Television Producers, Inc. ("Association"), and its member companies.

The Association's Petition correctly sets forth the opinion below, the jurisdictional basis of the Petition for Certiorari, and the statutes involved. As shown by the opinion of the Court of Appeal, however, especially page 25,[1] the Question Presented is not accurate.

[1]The pagination of the opinion referred to is that in Appendix A to the Petition for Certiorari.

Question Presented.

Does Section 14(a) of Taft-Hartley (29 U.S.C. 164 (a)) prevent a state from applying its public policy to an organization of supervisors so as to prohibit the officers, directors and negotiating committee thereof from having divided loyalties and a conflict of interest when they negotiate in behalf of the membership and of other supervisors a purported collective bargaining agreement?

Statement of the Case.

Respondents (plaintiffs below) brought a class action to invalidate an alleged collective bargaining agreement between employers (the Petitioners here, who are companies producing motion pictures and television films) and a labor organization (Producers Guild of America, Inc., or "PGA"). PGA is composed exclusively of supervisors (persons engaged or employed as "producers").

The overwhelming majority of supervisors and of the members of PGA are not themselves employers or officers or owners of employer companies. They are simply employed by production companies such as the Petitioners. But the evidence was uncontradicted that the overwhelming majority of PGA's officers, directors and negotiating committee were themselves employers or owners of (and officers elected by the Board of Directors of) employer companies which signed the alleged collective bargaining agreement. (The evidence is summarized at pp. 11-12 of the Opinion below.)[2] That

[2]The middle paragraph on page 5 of the Petition denigrates the evidence relied upon by the Court of Appeal. Apart from the facts that the findings here are not properly reversible, *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160 (1952), and that Peti-

agreement had a ten-year term and contained a union shop provision (requiring the members of the class to join PGA at an initiation fee of $750.00 each), but no benefits beyond health and welfare and a contributory pension plan. (See Opinion p. 34.)

The California Court of Appeal held that the officers and representatives of an organization which engages in collective bargaining for its employed members and for similarly employed persons, must remain free of divided loyalties and conflicts of interest (Opinion, p. 25), that the PGA collective bargaining agreement was executed in contravention of this significant public policy and was invalid and unenforceable. (Opinion, pp. 32-34.)

The opinion of the California court imposes no compulsion on the employers to deal with PGA or with any other union of supervisors, under the Taft-Hartley Act or under any other act, and it does not encroach one iota on the employers' right to coerce and restrain supervisors from joining unions or even from making any demands relating to their employment.

It simply holds that as a matter of public policy the fiduciary principle of faithful representation is to be applied to every organization, including a labor organization of supervisory employees.

Neither the organization of supervisors, PGA, nor any of its officers, have petitioned for certiorari.

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tioners have not really attacked them, the accuracy of the evidence was in fact conceded in the trial court. (See Opinion of the Court of Appeal, pp. 10-11, including footnote 9.) The evidence consisted of the answers of Petitioners themselves and of their co-defendants to written interrogatories and of compilations made therefrom.

THE ALLEGED REASONS FOR GRANTING THE WRIT ARE SPECIOUS.

1. The answer to the Association's first reason (Petition, pp. 7-10) is simply that the basis for the California Court of Appeal opinion is a fiduciary principle which has never been uprooted from the law, whether by Taft-Hartley Section 14(a) or by any cases thereunder. That principle is simple: When members of a group "have interests of their own as employees" their representatives must be free of a conflict of interest.

> *Florida Power and Light Co. v. I.B.E.W., etc.*, ... U.S. ...., 41 L.Ed.2d 477, 491 (June 24, 1974);
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> *Beasley v. Food Fair of No. Carolina*, ... U.S. ...., 40 L.Ed.2d 442, 449-450 (May 15, 1974);
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> *Packard Motor Car Co. v. Labor Board*, 330 U.S. 485, 489-490, 91 L.Ed. 1040 (1947);
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> *Safeway Stores v. Retail Clerks, etc. Association*, 41 Cal.2d 567, 575, 261 P.2d 721 (1953).

The 1947 amendments to the NLRA vitiated the holding of *Packard Motor Car Co.*, but the reasoning and objective foundation of the *Packard* opinion—that supervisors have interests of their own as employed persons—still applies to supervisors in both the federal and state fields. In *Florida Power*, the Court quotes from the House Report on the Taft-Hartley Bill, in part as follows:

> " 'The bill does not forbid anyone to organize. It does not forbid any employer to recognize a union of foremen. Employers who, in the past, have bargained collectively with supervisors may continue to do so. What the bill does is to say

> what the law always has said until the Labor Board, in the exercise of what it modestly calls its "expertness", changed the law: *That no one, whether employer or employee need have as his agent one who is obligated to those on the other side, or one whom, for any reason, he does not trust.*'. House Report, at 14-17, I Leg. Hist. 305-308 (emphasis supplied)." (41 L.Ed.2d at 491.)

The emphasis has been supplied by this Court itself, and there is no indication that the principle of faithful representation is to be applied to every class except supervisors. "No one" means what it says.[3]

That is, Congress and the Court both recognized and continue to recognize that supervisors as employed persons have interests which conflict with those of their employers when the terrain on which they meet is collective bargaining for the supervisors themselves. The opinion in *Florida Power* speaks of a union member as "a supervisory employee" (p. 488) and of resolving conflicts between supervisors and their employers who have permitted them to join unions "through the traditional procedures of collective bargaining" (p. 492), although supervisors have no Taft-Hartley or other statutory protections and employers cannot be compelled to bargain with them.

The very rationale, used by Congress and as elaborated by the courts, to remove supervisors from the protections of the NLRA is that conflicts of interest

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[3]As Justice Cardoza said in a different setting:

> "Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions."
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> *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928).

are to be avoided. In *Beasley v. Food Fair,* .... U.S. ...., 40 L.Ed.2d 443, 449-450 (May 15, 1974), Petitioners' principal authority, the Court, immediately before quoting the same passage from the House Report which we have quoted above, says the following:

> "Employers were not to be obliged to recognize and bargain with unions including or composed of supervisors, because supervisors were management, obliged to be loyal to their employer's interests, and their identity with the interests of rank and file employees might impair that loyalty and threaten realization of the basic ends of federal labor legislation. Thus the House Report stated:
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> *'Management, like labor must have faithful agents . . .'* " (Emphasis in text).

There is no intimation that when supervisors bargain *for themselves through their own labor organization* (which in this case does *not* include any employees under the NLRA) it is only their employers who are to have "faithful agents".

The policy is the same in California. See *Safeway Stores v. Retail Clerks, etc. Assn.*, 41 Cal.2d 567, 572-573, 261 P.2d 721 (1953), quoted in Opinion, pages 17-18.

The opinion of the California Court of Appeal in this case rests on this fundamental principle of public policy. (Opinion, p. 25.) *Hanna Mining Co. v. Marine Engineers,* 382 U.S. 181, 15 L.Ed.2d 254 (1965), reaffirmed by *Beasley* at 448 of 40 L.Ed2d, expressly permits a state to apply such a basic principle of public policy to "supervisory organizing" and "activity by a union of supervisors."

Pages 22-25 of the Opinion of the California Court of Appeal fully answer the Petitioners' contention that the opinion conflicts with *Beasley* and Section 14(a) of the NLRA. The California court has applied a fiduciary principle to a labor organization of supervisors (which PGA claimed it was and which the employers, the petitioners here, also claimed it was), and not as a compulsion to or against the employer. Nothing in the Court of Appeal opinion compels employers to deem supervisors to be employees. Nothing imposes or threatens to impose damages or other penalties on the employers.[4] The opinion simply requires that a labor organization which purports to represent supervisors and seeks to establish itself as the exclusive collective bargaining representative for a 10-year period under an obviously sweetheart contract must have as its officers and negotiators persons who are free of divided loyalties and conflicts of interest: Supervisors, no less than any other persons, are entitled to agents who are not committed to the other side. As this Court pointed out in *Florida Power* (41 L.Ed.2d at 492, esp. fn. 22), supervisors have conflicting loyalties when a union of employees under the NLRA, but to which they also belong, goes on strike. Here supervisors have *their own union,* and they are entitled to have *as their representatives* persons without any conflict of loyalties. The expectation is of representatives loyal to the supervisors as

[4]As pages 12 and 13 of the opinion make clear, the California court does not hold that the damage provision in California Labor Code Sec. 1122 could be applied against employers of supervisors. A large part of petitioners' argument is therefore inappropriate in this Court. The public policy of California which was violated is clearly stated in California Labor Code Sec. 923, which has no damage provision within it. The California court relies on Section 923 at pages 18, 19, 20, 26, 32, 33.

employed persons, not of representatives who are *themselves* employers with conflicts of interest. Such two-hat status is in fact expressly forbidden by the Labor Management Reporting Act of 1959 (LMRDA) and cases under it. See especially 29 U.S.C. 501(a).

2. Petitioners' second reason is that the National Labor Relations Board has exclusive jurisdiction. (Petition, p. 10.) This reason flies in the face of the stipulations and contentions below: *all* parties asserted that producers are supervisors and not employees within the meaning of the NLRA (29 U.S.C. 152(3)(11)) and it is undisputed and the court found, at PGA's and Petitioners' request, that PGA's membership is *limited* to such supervisory personnel.[5] It is not surprising, therefore, that all parties conceded that the doctrine of preemption insofar as it rested on the jurisdiction of the N.L.R.B. simply does not apply. *Hanna Mining Co. v. Marine Engineers,* 382 U.S. 181, 15 L.Ed.2d 254 (1965).

The statement on page 11 of the Petition that the "employee" status of PGA members "is currently being litigated before the National Labor Relations Board" is grossly incorrect.

The proceedings before the N.L.R.B. are unfair labor charges against the Writers Guild of America, West, Inc., which is a labor organization representing em-

[5]PGA and petitioners also contended below "that (1) PGA is a bona fide labor organization within the meaning of the Labor Code of the State of California." (Part of Finding VIII made by the trial court.)

ployees within the meaning of the Federal Act. The PGA is *not* a party to those proceedings. The Writers Guild's right to discipline its members for crossing its picket lines during a strike is in issue before the N.L.R.B. Some of its members are supervisors. The Board's jurisdiction over the Writers Guild and the charges being heard is there conceded—but that has nothing to do with this case.

The entire argument made on pages 11-13 of the Petition (commencing with the bottom paragraph on page 11) is at war with the positions of all parties as pleaded in the trial court, as tried before the trial judge, as argued in the Court of Appeal of the State of California (and as continued to be argued by them before the National Labor Relations Board). The present Petitioners and all other parties have maintained at all times that PGA is not entitled to *any* of the benefits of the NLRA and that the N.L.R.B. simply has no jurisdiction over the relations between PGA and employers. It is a strange argument for the employers now to make that PGA may be a "labor organization" within the meaning of the NLRA. Both procedurally and substantively the point has no merit.

Similarly, the Petitioners' extrapolated and imagined parade of horrors (Petition, p. 11) has nothing to do with this case. California's Labor Code is not "a little Taft-Hartley Act for supervisors employed in interstate commerce", and nothing in the opinion of the court below nourishes its flowering into a "panoply of rights and privileges" prohibited by the Congress.

Conclusion.

Contrary to petitioners' assertions, there is here no violation of the command of Section 14(a) of Taft-Hartley, no application of Taft-Hartley benefits to supervisors, no compulsion on the employers, and no preemption of the function or jurisdiction of the National Labor Relations Board. The opinion of the California Court of Appeal does not conflict with *Beasley*. It is in complete accord with *Beasley* and *Florida Power*, and is mandated by the fiduciary principle that a bargaining representative may not wear two hats and be subjected to conflicting loyalties.

The Petition for Writ of Certiorari should be denied.

Dated: December 20, 1974.

Respectfully submitted,

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